

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JAMES KENNETH MCCALLUM,

Plaintiff,

v.

DR. NAUGHTON *et al.*,

Defendants,

Case No. 3:19-cv-00243-MMD-WGC

ORDER

Pro Se Plaintiff James Kenneth McCallum, a state prisoner, submitted a civil rights complaint ("Complaint") pursuant to 42 U.S.C. § 1983. On March 16, 2020, this Court issued an order denying Plaintiff's application to proceed *in forma pauperis* because Plaintiff had "three strikes" pursuant to 28 U.S.C. § 1915(g). (ECF No. 3.) The Court informed Plaintiff that if he did not pay the \$400.00 filing fee in full within 30 days of the date of that order, the Court would dismiss the action without prejudice. (*Id.*) The 30-day period has now expired, and Plaintiff has not paid the full filing fee of \$400.00.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal*

1 Service, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with
2 court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (affirming
3 dismissal for lack of prosecution and failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey
5 a court order, or failure to comply with local rules, the Court must consider several factors:
6 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives. See
9 *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423-24; *Malone*, 833 F.2d at 130;
10 *Ferdik*, 963 F.2d at 1260-61; *Ghazali*, 46 F.3d at 53.

11 Here, the Court finds that the first two factors, the public's interest in expeditiously
12 resolving this litigation and the Court's interest in managing the docket, weigh in favor of
13 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of
14 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay
15 in filing a pleading ordered by the Court or prosecuting an action. See *Anderson v. Air*
16 *West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—public policy favoring
17 disposition of cases on their merits—is greatly outweighed by the factors in favor of
18 dismissal discussed herein. Finally, a court's warning to a party that his failure to obey the
19 court's order will result in dismissal satisfies the "consideration of alternatives"
20 requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132-33; *Henderson*, 779 F.2d
21 at 1424. The Court's order requiring Plaintiff to pay the full filing fee within 30 days
22 expressly stated: "It is further ordered that this action will be dismissed without prejudice
23 unless Plaintiff pays the \$400.00 filing fee in full within 30 days of entry of this order." (ECF
24 No. 3 at 2.) Thus, Plaintiff had adequate warning that dismissal would result from his
25 noncompliance with the Court's order to pay the full filing fee within 30 days.

26 It is therefore ordered that this action is dismissed without prejudice based on
27 Plaintiff's failure to pay the \$400.00 filing fee in compliance with this Court's March 16,
28 2020, order (ECF No. 3).

1 It is further ordered that the Clerk of Court will close the case and enter judgment
2 accordingly.

3 DATED THIS 20th day of April 2020.

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6 MIRANDA M. DU
7 CHIEF UNITED STATES DISTRICT JUDGE
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